

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Gary Washington,

Plaintiff,

v.

Continental Tire the Americas, LLC,

Defendant.

C/A No. 3:20-cv-04056-MGL-SVH

**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Defendant Continental Tire the Americas, LLC (“Defendant” or “Continental”), by counsel, and pursuant to Rule 56 of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), hereby moves this Court to enter an order granting summary judgment against Plaintiff Gary Washington (“Washington” or “Plaintiff”) on all claims in the Second Amended Complaint filed by Plaintiff on May 3, 2021<sup>1</sup>, and dismissing this action in full, with prejudice.

As demonstrated more fully in the Memorandum in Support of Defendant’s Motion for Summary Judgment, which Defendant is filing contemporaneously with this Motion and incorporates herein by reference pursuant to Fed. R. Civ. P. 10(c), summary judgment is proper on multiple grounds. As a threshold issue, Plaintiff is judicially estopped from asserting his claims against Continental arising under the Family and Medical Leave Act (“FMLA”) and the Age Discrimination in Employment Act of 1967 (“ADEA”) because he failed to disclose them to the

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 15(a)(1), Plaintiff filed an Amended Complaint with this Court on January 27, 2021, once as a matter of course, and on February 1, 2021, requested that Continental waive service of process. Subsequently, Plaintiff sought relief from the Court to file his Second Amended Complaint.

court as required in his Chapter 13 bankruptcy petition. Even if Plaintiff were not judicially estopped from asserting his claims under the FMLA and ADEA, which he is, the record of this matter demonstrates that Plaintiff cannot state a claim for age discrimination under the ADEA or retaliation under the FMLA and his claims fail as a matter of law. No genuine issues of material fact exist and Defendant is entitled to summary judgment as a matter of law on all of Plaintiff's claims.

Based on the foregoing, Defendant Continental, by counsel, respectfully requests this Court to enter an Order granting its Motion for Summary Judgment; dismissing Plaintiff's Second Amended Complaint, with prejudice, pursuant to Fed. R. Civ. P. 56; awarding it its costs and reasonable attorneys' fees; and awarding it such further relief as the Court deems just and proper.

Dated this the 15th day of July 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2022, I filed electronically the foregoing document with the Clerk of Court using the CM/ECF system. Notice of Filing will be sent to all counsel of record, including counsel for Plaintiff below, by operation of the Court's electronic filing system as follows:

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